

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re )  
RMS TITANIC, INC., et al., ) Case No. 3:16-bk-2230-PMG  
Debtors. ) Chapter 11  
\_\_\_\_\_)

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' OBJECTION TO DEBTORS' MOTION TO  
EXTEND EXCLUSIVITY AND RESPONSE TO EQUITY  
COMMITTEE'S MOTION TO TERMINATE EXCLUSIVITY**

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of RMS Titanic, Inc. and its debtor affiliates (together, the “Debtors”) objects to the Debtors’ motion to extend exclusivity by ninety days [ECF No. 382] and responds as follows to the motion of the Official Committee of Equity Security Holders (the “Equity Committee”) to terminate exclusivity [ECF No. 380]:

**Objection to Debtors’ Motion**

1. The Debtors’ argument that their unsecured creditors would not be prejudiced by the requested exclusivity extension through April 10 is disingenuous, at best:

(a) From the commencement of these cases, the Debtors have been focused almost exclusively on selling select French artifacts to repay their creditors and reorganizing around the balance of the Titanic collection. To date, the Debtors have done little to pursue alternative strategies, such as the sale of the entire Titanic collection,

subject to the Revised Covenants and Conditions (reported at 742 F. Supp. 2d 784). The Debtors have acknowledged as much in their motion. (*See* Debtor Mot. ¶17.b, stating the RFP issued to auction houses solicited proposals “in connection with a potential sale of the French artifacts should the Debtors obtain a favorable outcome in the French Adversary”).<sup>1</sup>

(b) The cash collateral budget prepared by the Debtors’ financial advisor and shared with the Creditors’ Committee earlier this month indicates the Debtors are operationally insolvent and are expected to run out of cash in a matter of months absent a DIP loan.

(c) The Debtors have acknowledged that their ability to close on a DIP loan hinges on their obtaining clean title to the French artifacts, which in turn requires that they prevail in the pending adversary proceeding against France, which has yet to occur.

2. Accordingly, unsecured creditors would be prejudiced by an exclusivity extension, as such relief would permit the Debtors to continue to avoid pursuing a dual-track sale process, a strategy both official committees have pressed the Debtors to pursue since September, even though the Debtors’ preferred strategy carries tremendous risks to the success of these cases. The Debtors’ statement that they have received no proposals from any party regarding an alternative strategy (Debtor Mot. ¶¶20, 22) is patently false.

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<sup>1</sup> By letter, dated December 23, 2016, the Debtors advised the official committees that the Debtors “fully intend to consult with any auction company ultimately retained on any potential sale of the collection in its entirety,” but to date have done little, if anything, in furtherance of any such sale. Further, the Debtors’ prior communications concerning the RFP process make clear they have no intention of running a dual-track sale process, but instead will only consider a sale of the entire collection after a French artifact sale process is well underway.

3. The Debtors attempt to portray their limited cash resources as a reason to extend exclusivity (Debtor Mot. ¶21), arguing that absent such relief the Debtors will have to pay administrative expenses that they can ill afford associated with another party's potentially proposing a plan that contemplates an alternative strategy.

4. The Debtors' deteriorating cash position, however, weighs against extending exclusivity. The legislative history to section 1121(d) provides “[a]n extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory.” S. Rep. No. 989, 95<sup>th</sup> Cong., 2d Sess. 118 (1978). By arguing, in effect, an extension is needed because the estate cannot afford to pay professionals to pursue an alternative reorganization strategy the Debtors are doing exactly that.

5. Given the foregoing and the advance notice required to obtain disclosure statement approval and plan confirmation under Bankruptcy Rules 2002 and 3017, exclusivity should be terminated now, and the Debtors' motion should therefore be denied.<sup>2</sup>

#### **Response to Equity Committee's Motion**

6. The Creditors' Committee disputes the Equity Committee's position that common stockholders are the “real stakeholders” because “there appears to be ample value at hand to ensure that … unsecured creditors … will be paid in full.” (Equity Comm. Mot. ¶¶14-15, 25-28.) The Debtors previously stated that if they are unable to

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<sup>2</sup> Alternatively, the Creditors' Committee requests that the Court enter a bridge order extending exclusivity only through January 23, and hold a status conference pursuant to Bankruptcy Code section 105(d)(2)(B) on the Debtors' exclusivity request following consideration of the Debtors' default judgment motion at the January 23 hearing.

promptly consummate their contemplated plan of selling French artifacts and reorganizing around the remainder of the Titanic collection, there is a very real possibility unsecured creditors will not be paid in full. (Oct. 25 Tr. 10:5-24, 23:21-24:11, attached as **Exhibit 1**.) Likewise, unsecured creditors may not be paid in full if the Debtors cannot fund these chapter 11 cases. (See ¶1.b, *supra*; Oct. 25 Tr. 23:11-14, noting the urgency with which the Debtors must emerge from bankruptcy because of the Debtors' financial position.)

7. Nevertheless, the Creditors' Committee does not oppose the relief sought by the Equity Committee (termination of exclusivity solely as to the Equity Committee), provided exclusivity is also terminated as to the Creditors' Committee. The Creditors' Committee has consulted with the Equity Committee, which has consented to the foregoing relief.

WHEREFORE, the Creditors' Committee requests that the Court deny the Debtors' motion and extend the coexclusivity relief sought by the Equity Committee to the Creditors' Committee, and grant such other and further relief as the Court deems appropriate.

Dated: December 28, 2016

Jeffrey Chubak (admitted *pro hac vice*)  
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- and -

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**Certificate of Service**

I hereby certify that on December 28, 2016, the foregoing pleading was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case Files System, which will send a notice of electronic filing to all parties who have consented to receiving electronic notifications in this case. I further certify that on, December 28, 2016, copies of the foregoing were furnished by U.S. Mail, postage prepaid to the following:

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NY Dept. of Taxation and Finance Attn: Office of Counsel W.A. Harriman Campus Bldg. 9 Albany, NY 12227	NY Dept. of Taxation and Finance PO Box 4127 Binghamton, NY 13902	PacBridge Limited Partners 22/F Fung House 19-20 Connaught Road
Central Hong Kong Pallet Rack Surplus, Inc. 1981 Old Covington Cross Rd NE Conyers, GA 30013	Ramparts, Inc. d/b/a Luxor Hotel and Casino 3900 Las Vegas Blvd. South Las Vegas, NV 89119	Screen Actors Guild 1900 Broadway 5th Floor New York, NY 10023
Seaventures, Ltd. 5603 Oxford Moor Blvd. Windemere, FL 34786	Soprintendenza Archeologica di Napoli e Pompei Piazza Museo 19 Naples, Italy 80135	Structure Tone, Inc. 770 Broadway 9th Floor New York, NY 10003
Syzygy3, Inc. 1350 6th Avenue 2nd Floor New York, NY 10019	Time Out New York 475 Tenth Avenue 12th Floor New York, NY 10018	TPL 3340 Peachtree Road Suite 2140 Atlanta, GA 30326
TSX Operating Co. 70 West 40th Street 9th Floor New York, NY 10018	Verifone, Inc. 300 S. Park Place Blvd. Clearwater, FL 33759	Sam Weiser 565 Willow Road Winnetka, IL 60093
WNBC - NBC Universal Media 30 Rockefeller Center New York, NY 10112	Jihe Zhang 59 Dongsanhuan Middle Road Fuli Shuangzi Towers, Building A Suite 2606, Chaoyang Dist. Beijing, China 100021	Haiping Zou Unit 110-115 Wanke Qingqing Homeland Doucezhuang, Chaoyang Dist. Beijing, China 100021

*/s/ Robert A. Heekin, Jr.*

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Attorney

# Exhibit “1”

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC.,

CASE NO: 16-02230-3G1

Debtor.

/

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: October 25, 2016  
TIME: 10:02 a.m. - 10:37 a.m.  
PLACE: United States Courthouse  
300 North Hogan Street  
Courtroom 4A  
Jacksonville, Florida 32202

BEFORE: The Honorable Paul M. Glenn  
U.S. Bankruptcy Judge

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING  
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE  
APPROVED BY ADMINISTRATIVE OFFICE OF U.S. COURTS

This cause came on to be heard at the time and place  
aforesaid, when and where the following proceedings  
were transcribed by:

**Cindy Danese, Notary Public  
STATEWIDE REPORTING SERVICE  
233 East Bay Street, Suite 606  
Jacksonville, Florida 32202  
(904) 353-7706**

1                   Would anyone else like to be heard?

2                   Mr. Gurfein, Mr. Brown.

3                   MR. GURFEIN: Your Honor, Peter Gurfein.

4                   That's correct, the Equity Committee supports  
5                   this motion.

6                   THE COURT: Thank you.

7                   Mr. Thames?

8                   MR. THAMES: Your Honor, on behalf of the  
9                   Creditors Committee, no objection.

10                  THE COURT: And Mr. Bomkamp.

11                  MR. BOMKAMP: No objection, Your Honor.

12                  THE COURT: Very good. Thank you very much.

13                  And so that motion is granted.

14                  And, Mr. Blanks, would you prepare an order  
15                  granting that and review it with those who wish to  
16                  review it?

17                  MR. BLANKS: I will, Your Honor. Thank you  
18                  very much.

19                  And the last item on the calendar for this  
20                  morning, Your Honor, is the Debtors' motion for an  
21                  extension of time, exclusivity time to file this  
22                  plan and solicit votes with respect to that plan.

23                  Your Honor, as set forth in the motion, the  
24                  Debtors request additional time so that they can  
25                  formulate a plan and solicit votes of

1 reorganization.

2 Your Honor, as set forth in the motion and, as  
3 you know, the Court would grant such a motion for  
4 cause. The cause is set forth in the motion, but,  
5 to supplement that, Your Honor, as Your Honor is  
6 very much aware and has been in front of this  
7 Court, the Debtors' intention, both stated publicly  
8 in this courtroom as well as in filings in this  
9 Court, is that we'd like to sell some French  
10 artifacts, pay all the creditors in full and have a  
11 complete return to equity.

12 Your Honor denied our initial motion with  
13 respect to the sale of those French artifacts. We  
14 have now initiated an adversary proceeding with  
15 respect to the Republic of France -- I think it was  
16 a declaratory judgment action -- to say that France  
17 does not have any interest in that property.

18 Our stated goal continues to be that we would  
19 like to sell a portion of the French artifacts and  
20 have a complete return to equity and pay every  
21 single creditor in full.

22 We are working -- that is what I'll call Plan  
23 A. That is certainly our intention, that is our  
24 goal, both publicly and privately, with all the  
25 people that are in this room. That is our plan.

1           That's the plan that we set forth almost on the  
2           very first day and that continues to be our goal,  
3           and we'll be hopefully achieving this  
4           reorganization process.

5           **If forced, we would follow what we call Plan**  
6           **B. Unfortunately, Plan B, if we're unable to sell**  
7           **the French artifacts and the French artifacts -- we**  
8           **cannot get proper title with respect to those**  
9           **artifacts, unfortunately, at this time, based upon**  
10           **the claims that have been asserted against the**  
11           **estates as well as the stated assets that are**  
12           **listed in our schedules, there would not be a**  
13           **return to equity and, in fact, the creditors would**  
14           **not get paid in full and probably get paid cents on**  
15           **the dollar.**

16           And so, if that's the plan that we would have  
17           to submit at this particular time, that's what the  
18           plan would effectively be.

19           **Unfortunately, with the facts as they exist**  
20           **today, if we're unable to sell the French**  
21           **artifacts, there is insufficient amount of assets**  
22           **to pay all the creditors in full, and the Equity**  
23           **Committee and all of its members would be out of**  
24           **the money in that particular instance.**

25           We are diligently trying other alternatives

1 and, unlike what is stated in the opposition, we  
2 are formulating different plans, we are talking to  
3 different people.

4 We have recently filed a motion to retain  
5 GlassRatner as our financial advisor. With that  
6 financial advisor, we would like to help us to  
7 formulate that plan in order to exit bankruptcy,  
8 with or without the sale of the French artifacts.

9 The Equity Committee, unfortunately, has filed  
10 an opposition to GlassRatner. And so, not only are  
11 they frustrating the efforts or are not assisting  
12 in the efforts to try to formulate a plan to exit  
13 bankruptcy, they are opposing the help the Debtors  
14 have requested.

15 Your Honor, so we are diligently trying to  
16 formulate a plan.

17 If called to testify, the CFO or the CEO of  
18 the company would testify that their stated goal to  
19 me as well as the company is to exit Chapter 11 as  
20 quickly as possible. They have no desire  
21 whatsoever to stay in Chapter 11 a second longer  
22 than absolutely necessary.

23 Unfortunately, we are in the circumstance  
24 where we are effectively waiting on an adversary  
25 proceeding with respect to France before we can

1           effectively formulate a plan of reorganization that  
2           would achieve the goals that we've stated publicly  
3           in this courtroom, which is to pay all the  
4           creditors in full and have a return to equity.

5           I believe that's sufficient cause to grant the  
6           relief requested in our motion today.

7           I would like to note that, although styled as  
8           an objection to -- or a limited objection to our  
9           request for exclusivity, I read through the Equity  
10           Committee's objection and I would submit that it's  
11           not an actual objection. Although it's styled as a  
12           limited objection, I don't believe that they  
13           directly say that they would like us not to have  
14           exclusivity.

15           I believe that, Your Honor, most of that --  
16           most of that opposition is really an opportunity  
17           that the Equity Committee took to take a swipe at  
18           management and in the objection that they see with  
19           the current status of management duties and  
20           actions.

21           And, Your Honor, they took a couple of swipes  
22           -- at the previous hearing, counsel for the  
23           committees took a couple of swipes at management,  
24           as you may recall, and I declined to respond in  
25           kind. That's not the way I want to litigate. I

1           don't want to litigate this particular motion that  
2           way or anything else before Your Honor.

3           But in reading through the objection, I think  
4           there's a couple of different agendas that may be  
5           at play here, and not just objecting to the relief  
6           requested in that motion.

7           And I wanted to point out to Your Honor that  
8           members of the Equity Committee may have separate  
9           agendas from what is stated -- what they state in  
10           the limited objection, which is they may have had  
11           previous problems with previous management, as well  
12           as this current management, but those -- that  
13           distrust or that those problems that they may have  
14           had with previous management is not cause to deny  
15           the current Debtors' motion to extend exclusivity  
16           at this time.

17           And with that, Your Honor, I'll turn the  
18           podium over to counsel for the Equity Committee who  
19           filed the objection.

20           THE COURT: Thank you.

21           Mr. Gurfein.

22           MR. GURFEIN: Thank you, Your Honor.

23           The Equity Committee is fully cognizant that  
24           there's a Bankruptcy Code policy on exclusivity  
25           that fosters the opportunity for debtors to

1                   THE COURT: Mr. Wainger.

2                   MR. WAINGER: Try to find a common ground  
3                   where we can here, Judge, and it appears that  
4                   everybody in the courtroom is interested in moving  
5                   this process forward as quickly as possible. And  
6                   that is absolutely the goal of the Debtors, and it  
7                   likewise appears to be the goal of every other  
8                   constituency here.

9                   And a number of the decisions the Debtors have  
10                  made have been in an effort to expedite this  
11                  process, some unsuccessfully, but the Debtors have  
12                  consistently told this Court and will consistently  
13                  tell this Court that speed is urgent. All we have  
14                  to do is look at the financials to know that. So I  
15                  think there is very much common ground there.

16                  But I think that we need to be very careful  
17                  about saying there are a variety of options and  
18                  that they're only putting their eggs in one basket.

19                  Certainly, the Debtors have said publicly that  
20                  a sale of the artifacts, after careful analysis,  
21                  appears to be the best solution. When Mr. Thames  
22                  said there are \$200 million of assets that we can  
23                  look at for a variety of possibilities, that defies  
24                  certain restrictions and challenges associated with  
25                  what we have called the American artifacts and with

1 what we are about to litigate with this Court with  
2 regards to the French artifacts.

3 So it's easy to say there's \$200 million  
4 dollars of assets, but, when you dig a little bit  
5 deeper, we recognize that at some point -- at some  
6 point there is some wisdom to what the company is  
7 looking to achieve, and I act on what Mr. Blanks  
8 said, which is, if the company is not able to  
9 achieve that, well, then the Equity Committee, for  
10 starters, doesn't really have a seat at the table  
11 or any legitimately viable benefits.

12 Having read the 20-page brief, which was  
13 pretty direct about their feelings, and having seen  
14 the \$100,000 billed in the first month for counsel  
15 to the Equity Committee, I see some other issues  
16 being at play here, Judge. And most recently I saw  
17 a motion to extend the timeline to file claims so  
18 that the Equity Committee could explore claims and  
19 explore a class action.

20 And so I heard Mr. Gurfein talk about the  
21 necessity for the Debtors to engage, and I read  
22 that the Debtors have not provided information to  
23 the Equity Committee. It's not true. The level of  
24 engagement has been substantial.

25 But when we talk about mistrust and agendas,

1       Judge, when the company believes -- when the  
2       Debtors believe that the primary agenda of the  
3       Equity Committee is to pursue a class action claim  
4       against the Equity Committee and use the  
5       appointment and use the Debtor's money to develop  
6       those claims, well, then there is a bit of caution.

7           So I think it's absolutely appropriate on  
8       behalf of the Debtors to exercise that caution,  
9       Judge. And so when we look at the intentions of  
10      the parties and what's happening here, we're not  
11      taking potshots. That's not the way we choose to  
12      litigate. But we all need to be clear there's a  
13      lot going on here.

14           And so, at the end of the day, Judge, we will  
15      honor our obligations as counsel to the Debtors,  
16      and, as Debtors, to inform the committees as they  
17      need to be informed. We will engage with them. We  
18      will help them prepare, as we have done, but we  
19      will do so judiciously and cautiously.

20           And the last thing I'll say, Judge, is to  
21      attribute malice to a whereas clause in the brief  
22      we filed is simply nonsense. We're not looking to  
23      create a gotcha moment here.

24           We're asking for what is appropriate, 90 days.  
25       And to the extent that detail isn't there, shame on

1           us for not providing that detail. But let's not --  
2           let's not go so low as to suggest that that's an  
3           intentional action. That's not what we're trying  
4           to accomplish here.

5           The Debtors and their counsel respect this  
6           process and will continue to do the best they can  
7           for all of the constituencies.

8           THE COURT: Thank you. Thank you.

9           Anyone else wish to be heard?

10           MR. GURFEIN: Your Honor, Peter Gurfein, if I  
11           may?

12           THE COURT: Certainly.

13           MR. GURFEIN: It's as if it gives on one hand  
14           and takes away with the other.

15           We're here today talking about a plan process  
16           and we're here today talking about the Chapter 11  
17           process. Part of that process requires official  
18           committees to fulfill their fiduciary duty to their  
19           constituencies, and among those is to determine  
20           what the assets of the estate are and to determine  
21           whether there are claims, and that is something the  
22           committee will do.

23           That in no way detracts from the fact that  
24           this is a case with some challenges, and we're  
25           Chapter 11 professionals who know how to roll up

## C E R T I F I C A T E

2 STATE OF FLORIDA )

3 COUNTY OF DUVAL )

4 I, Cindy Danese, a Notary Public, State of  
5 Florida at Large, do hereby certify that the foregoing  
6 is the official transcript, prepared to the best degree  
7 possible from the digital audio recording and logs  
8 provided by the Court.

9 I further certify that I am neither counsel  
10 for, nor related to, nor am employee of any of the  
11 parties to the action in which this hearing was taken.

12 I further certify that I have no personal  
13 interest in the outcome of the action.

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## STATEWIDE REPORTING SERVICE

Cindy Danese